

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 25/04/2003

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THE HONOURABLE MR. JUSTICE P.K. MISRA

WRIT PETITION No.1414 OF 2003

AND

WPMP.NOs.1765 & 5909 OF 2003

S.P. Saravanan,
S/o. Palani Gounder .. Petitioner

-Vs-

1. The Commissioner,
Sathyamangalam Municipality,
Sathyamangalam, Erode District.

2. The Sathyamangalam Municipal
council, Sathyamangalam
Municipality, Sathyamangalam,
Rep. by its Chairman. .. Respondents

Petition filed under Article 226 of the Constitution of India for
issuance of a Writ of Certiorarified Mandamus as stated therein.

For Petitioner : Mr.S. Kamadevan

For Respondents : Mr.V. Subbarayan
Special Govt. Pleader

:J U D G M E N T

Petitioner has prayed for quashing the resolution No.1212 dated 30.1
.2001 passed by the second respondent and the consequential order passed by
the first respondent in Na.Ka.No.2535/2002/H1 dated 11.11.2002 .

2. Petitioner is the owner of an agricultural and poultry farm. The
petitioner in his own building, coming within the area of the second
respondent, decided to install a mutton and chicken stall. He filed an
application requesting the respondents to grant licence for running the mutton
and chicken stall. Since the formal application dated 21.7.2002 had remained
pending, the petitioner opened the stall on 11 .8.2002, but subsequently a
notice was issued by the respondent under Sections 269 and 313 of the Tamil
Nadu District Municipalities Act directing the petitioner to close the shop as
he was running the shop without licence. Subsequently, a further notice dated

19.8.2002 was issued. At that stage, the petitioner filed W.P.NO.35300 of 2002. Learned single Judge of this Court disposed of the said writ petition on 12.9.2002 directing the respondent Municipality to consider and dispose of the application filed by the petitioner for the grant of licence. It was further observed that if the application filed was not in accordance with law, it would be open to the petitioner to file fresh application. While the application was pending, the respondents attempted to interfere with the running of the shop. The petitioner had filed a suit, but the same was withdrawn. Subsequently, the petitioner came to learn that licence fee regarding various items had been fixed and accordingly the petitioner applied for licence by depositing the licence fee of Rs.550/-. The application was rejected on the ground that the Municipal Council has already passed a resolution indicating that the licence for running chicken and mutton stall shall not be granted to a private person. At that stage, the petitioner filed W.P.No.41657 of 2002 and the said writ petition was disposed of with an observation that a copy of the resolution should be furnished to the petitioner and it would be open to the petitioner to file a fresh writ petition challenging the said resolution. In the above background, the present writ petition has been filed for quashing the resolution of the Municipality and for quashing the consequential order passed by the first respondent rejecting the application of the petitioner.

3. Even though no formal counter affidavit has been filed by the respondents, a copy of the written instructions obtained by the counsel for the respondents has been filed in the Court and the same has been treated as counter in the case. In such written instructions, which has been treated as counter, it has been indicated that the petitioner has violated the provisions of the Tamil Nadu District Municipalities Act, 1920 by having non-vegetarian private market in a purely residential area. It has been stated that the Council has passed a resolution not to issue licence for private individuals as the same would cause health hazard to the public and would affect the income of the Municipality. Hence the granting of licence was not considered by the Executive Authority.

4. Learned counsel appearing for the petitioner has relied upon an unreported decision of Justice F.M. Ibrahim Kalifulla in W.P. Nos.15114 to 15116 of 2001 disposed of on 21.8.2001, wherein it was observed : ¶ 2. Admittedly the petitioners applied for the licence to start a chicken stall in a rented premises not belonging to the respondent Panchayat. If that be so, in the event of the petitioners satisfying the other legal requirements relating to the running of such chicken stall having regard to the various other aspects as stipulated in respect of such issuance of licence under the provisions of Panchayat Act, the respondent can issue the licence to them. It is not open for the respondent to deny the grant of licence on the vicious plea that running of chicken stall within the panchayat limit can be carried on only on auction basis. When the petitioner applied for issuance of the licence in respect of the premises which they took on lease from the concerned private owner, there is no scope for the respondent to reject the issuance of licence in favour of the petitioners on the ground mentioned in the proceedings impugned in these writ petitions. Therefore, the order impugned in these writ petitions cannot be sustained.

3. While setting aside the order impugned in these writ petitions, the respondent is directed to consider the issuance of licence in favour of the petitioners based on their applications in the event of their satisfying the other requirements relating to running of a chicken stall within the panchayat limits as per the conditions prescribed under the provisions of the Panchayat Act. . . .□ (Emphasis added)

5. In the present case, one of the main reasons for rejection of licence seems to be the possibility of loss to be caused to the Municipality. In view of the above decision, such a stand is not open to be taken. Moreover, the application for licence was for the year 2002 -2003, which has come to an end.

6. In such circumstances, the writ petition is disposed of with an observation that if fresh application would be filed by the petitioner clarifying the objections raised by the respondents regarding the possible health hazard and impediment to be caused to the traffic and the permissibility of having a shop in a residential area, such application may be considered in accordance with law within a period of eight weeks from the date of receipt of such application. It is made clear that no opinion has been expressed on these aspects. No costs. Consequently, the connected Miscellaneous petitions are closed.

Index : Yes

Internet : Yes

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To

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